REMARKS

The Office Action mailed on January 4, 2007 has been carefully considered. Accordingly, the changes presented herewith, taken with the following remarks, are believed sufficient to place the present application in condition for allowance. Reconsideration is respectfully requested.

Because the instant response has been filed along with a Petition for Revival for the current application, Applicant request an interview with the Examiner prior to the issuance of a new Office Action.

Claims 1-43 are currently pending in the instant application. New claims 44-47 are respectfully submitted for consideration by the Examiner. No new matter has been introduced by the addition of claims 44-47. Claims 4, 12, 32-33, and 37 are cancelled without prejudice, Applicant reserving the right to pursue these claims at a later time.

The drawings stand objected under 37 CFR 1.84(h)(5). A replacement sheet is submitted herewith to overcome the current objection. Specifically, the label "Figure 2" has been added near the middle figure on the drawing sheet and the label "Figure 2" located near the bottom of the original drawing sheet as originally filed has been replaced by the label "Figure 3". The specification has been amended to correspond with the changes to the drawings.

The Specification has been objected to as having a title that is not descriptive of the claimed invention. The Specification has been amended to obviate the rejection.

Claims 12, 16-17, 20, 29, 31-36, and 43 stand objected to because of informalities. The claims have been amended or deleted to obviate these objections.

Claim 2 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 2 has been amended to obviate the rejection.

Claims 1-3, 9-12, 14, and 18-19 stand rejected under 35 U.S.C. 102(e) as being anticipated by USPub 2002/0165522 ("Holmen"). Claims 4-8 and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Holmen. Claims 13 and 37 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Holmen in view of USPN 6,361,561 ("Huo"). Claims 20-25 and 38-41 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Holmen in view of USPN

5,968,824 ("Spruce"). Claims 16-17, 26-36, and 42-43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Holmen in view of WO 02/15828 ("Green"). Applicant traverses these rejections for the following reasons.

Claims 1-12, 14-15, and 18-19 Are Not Anticipated by, or Unpatentable Over, Holmen.

Before addressing specific distinctions of the pending claims over the prior art, Applicant wishes to point out that the claimed ophthalmic surgical method, as amended, is directed to providing an injected composition to the germinative zone (equatorial region) of a capsular bag when a capsule filling implant is already in place. This capability is achieved through the use of an instrument having a hydrophobic outer surface that impedes the flow of the injected composition back toward a proximal end of the instrument. None of the cited prior art, either alone or in combination, discloses or suggest a method capable of delivering a composition to the germinative zone in the case of a capsule filling implant. Indeed, the cited prior art does not even appear to recognize the existence of a problem in delivering a composition to the germinative zone when the capsular bag contains a capsule filling implant.

As amended, claim 1 is directed to an ophthalmic surgical method comprising, in pertinent part:

- inserting a capsule filling implant comprising an injectable material into a lens capsule;
- injecting a composition using an instrument having a hydrophobic outer surface such that the composition reaches a germinative zone of the capsular bag.

Holmen does not disclose, or even suggest, elements of claim 1. For example, Holmen does not disclose inserting a capsule filling implant into a lens capsule. Rather, Holmen merely discloses implanting an intraocular lens, but fails to disclose or even suggest inserting an intraocular lens, or any other substance or device, that fills the capsular bag, as required by claim 1. Even more, Holmen does not disclose inserting a capsule filling implant comprising an injectable material into a lens capsule. To the contrary, Holmen discloses a relatively large capsulorhexis in a capsular bag suitable for insertion of a typical intraocular lens. Holmen, FIGS. 2-7, which show a relatively large capsulorhexis in a capsular bag. Such a relatively large capsulorhexis is not generally suitable for an injectable material. Thus, Holmen essentially teaches away from a capsule filling implant comprising an injectable material.

In addition, Holman does not disclose or suggest injecting a composition using an instrument having a hydrophobic outer surface such that the composition reaches a germinative zone of the capsular bag. To the contrary, Holman is silent regarding an instrument having a hydrophobic outer surface. In this regard, the current Office Action asserts, in reference to claims 4-6, that utilizing an instrument having a hydrophobic outer surface would have been considered clearly obvious to an ordinary artisan so as to prevent cytotoxic agent from being carried to other tissues by the needle. Applicant respectfully disagrees and contends that such assertion is conclusory and depends on impermissible hindsight. Applicant request the Office provide evidence that an ordinary artisan would have drawn such a conclusion merely based on a knowledge of hydrophobic materials. Furthermore, assuming arguendo that it would have been obvious to an ordinary artisan that a hydrophobic outer surface would provide such an affect, such an artisan would have no reason to combine such knowledge to the disclosure of Holman, since Holman does not disclose or suggest preventing cytotoxic agents from being carried to other tissue. To the contrary, Holman discloses assuring that a low dose of an active agent be distributed over the whole capsule. Holman, paragraphs [0022] and [0023]; also, see FIG. 5, which shows an active agent (15) over the entire interior surface of lens capsule 8.

Furthermore, Holman does not disclose or suggest injecting a composition into a space between a capsule filling implant and the lens capsule such that the composition reaches a germinative zone of the capsular bag. Indeed, since Holman does not disclose injection of a capsule filling implant in the first place, Holman cannot possibly disclose injecting a composition into a space between a capsule filling implant and the lens capsule, much less injecting a composition under these conditions such that the composition reaches a germinative zone of the capsular bag.

Also, Holman does not disclose or suggest limitations contained in various claims depending from claim1. For example, Holman does not disclose or suggest an opening in a capsular bag that is below 3 mm, as required by claim 7, or that is from 0.8 to 1.5 mm, as required by claim 8. To the contrary, Holman is completely silent regarding dimensions of an opening in a capsular bag (capsulorhexis). The current Office Action asserts, with regard to claims 7 and 8, that Holman teaches the use of a 3 mm opening. Applicant respectfully traverse this assertion. Applicant suggests that the Office may have misinterpreted paragraph [0005] of Holman, which

discloses a 3-4 mm corneal incision. The corneal incision is not the same as a capsulorhexis, the former refers to an incision made in the outer corneal surface of an eye (typically at the limbus), while the later is a generally circular opening made inside the eye in the anterior of a capsular bag.

At least because Holman does not disclose or suggest all of the limitations of claim 1, Applicant requests the Examiner allow claim 1. Claims 2-12, 14-15, and 18-19 depend from claim 1 and further define the invention of claim 1. Thus, claims 2-12, 14-15, and 18-19 are patentable over Holman at least for the same reasons that claim 1 is patentable thereover, and are patentable in their own right as well.

Claim 13, 16-17, 20-25, and 26-43 Are Patentable Over Holman, Huo, Spruce, and Green.

Huo, Spruce, and Green do not overcome the failures of Holman to disclose all the limitations of claim 1. Accordingly, claim 1 is also patentable over Huo, Spruce, and Green. Claims 13, 16-17, 20-25, and 26-43 depend from claim 1 and incorporate all the limitations of claim 1. Thus, claims 13, 16-17, 20-25, and 26-43 are patentable over Holman, Huo, Spruce, and Green for at least the same reasons claim 1 is patentable thereover, and are patentable in their own right as well.

CONCLUSION

For the foregoing reasons, Applicant respectfully asserts that the claims now pending are allowable over the prior art of record. Therefore, Applicant earnestly seeks a notice of allowance and prompt issuance of this application.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

The Commissioner is hereby authorized to charge payment of any fees associated with this communication to Deposit Account No. 502317.

Respectfully submitted,
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